

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/03/2004

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

SECOND APPEAL NO.1197 OF 1993

1. K. Krishnan
2. S.M.K.K. & Co.
Through its Partner .. Appellants

-Vs-

1. Idol of Sree Muniswaraswamy
through its Trustees
A.P.Shanmugha Sundaramoorthy
and A.P.Shanmughanathan

2. A.P.Shanmughasundaramoorthy
3. A.P.Shanmughanathan
4. Vallimuthu Nadar .. Respondents

This second appeal is preferred under Section 100 of CPC against the judgment and decree dated 30.4.1993 made in AS No.104 of 1992 on the file of the learned Principal Subordinate Judge, Tiruchirapalli confirming the judgment and decree dated 6.3.1992 made in OS No.364 of 19 85 on the file of the learned Principal District Munsif, Tiruchirapalli.

!For Appellants : Mr.P.Mani

^For Respondents : Mr. T.R.Rajaraman

:JUDGMENT

The defendants, who suffered with a decree in the hands of both the courts below in a suit for declaration, recovery of possession and for rental balance, have brought forth this second appeal.

2. The short facts necessary for disposal of this appeal are as follows:

The suit property, a thatched shed, which is resting on the eastern wall of the plaintiff's temple in Door No.1, Rengasamy Chettiar Street, Trichy belonged to the plaintiff's temple. The second plaintiff is the trustee of the first plaintiff temple. The first and the second defendants have been in possession as tenant from 1969 agreeing to pay the monthly rental. The present agreed rent is Rs.135/- per month. There was a wilful default on the part of the defendant in making the payment from 1.3.1982. The arrears amount

due for the said period till the filing of the suit was Rs.4,837.50 deducting the advance of Rs.300/-. The first and the second defendants have sublet the premises to the third defendant without the consent of the plaintiff. A presuit notice was issued terminating the tenancy, which resulted in a reply notice with false allegations denying the title of the plaintiff, and hence, there arose a necessity for filing the suit.

3. The suit was resisted by the defendant mainly on two grounds that the suit property was a Government poramboke, and thus, the plaintiff was not entitled for the relief as asked for; that insofar as the recovery of possession, the tenancy agreement pleaded by the plaintiff was false and there was no landlord and tenant relationship between the parties, and hence, the suit was to be dismissed.

4. The trial court framed necessary issues, tried the suit and decreed the same. The appeal filed by the defendants was also dismissed by the first appellate court, and hence, this second appeal at the instance of the defendants.

5. At the time of admission, the following substantial questions of law were formulated by this Court for consideration:

1) Whether the courts below erred in law and misdirected themselves in declaring that the suit property belong to the first plaintiff when admittedly the suit property is Government poramboke?

2) Whether the courts below erred in law and misdirected themselves in casting the burden on the defendants to prove the negative that there existed no tenancy when in law it is for the plaintiffs to prove their case of prior possession and letting the defendants into possession by sufficient evidence?

6. Heard the learned counsel for the appellants and also the learned counsel for the respondents on those contentions.

7. As seen above, the plaintiff temple sought the relief of declaration and recovery of possession of the suit mentioned property alleging that the first and second defendants, pursuant to an oral lease, got into possession of the property agreeing to pay the monthly rental, and they have been paying so, but there was a default on their part from 1.3.1982 till the filing of the suit, which amounted to Rs.4837.50; that after exchange of the notice, the suit was filed.

8. The defence plea was twofold that the plaintiffs are not the owner of the property, and there was no landlord and tenant relationship between the parties. In order to substantiate the case, the plaintiff, the trustee of the temple, was examined as P.W.1. He has deposed that the property belonged to the temple. There are so many tenants including the plaintiffs; that the defendants 1 and 2 have been in possession of the property from 1969 onwards and they have been paying rentals and the same has also been recorded in the registers maintained. D.W.1, on the contrary, has deposed that there was neither any agreement of tenancy nor any payment of rental in the past, but they encroached upon the Government poramboke from the year 1969 and they have been running a jaggery business in the suit property.

9. Admittedly, the suit property is a thatched shed abutting the temple wall and number of shops are situated on both sides of shop, in question. It is not the case of the plaintiffs that there was any written agreement between the parties, and hence, any agreement in the written form could not be expected. There are sufficient evidence to show that P.W.1 was

the trustee and competent to give evidence on behalf of the temple. In respect of the property, in question, B-Memos were served on the plaintiffs and they have paid charges also, which were marked as Exs.P.34 to P.37, which stood in the name of the second plaintiff, who was shown as trustee of Kuttala Parameswari Temple. In order to prove the payment of rental, the plaintiffs have relied on the ledger books maintained by the trustee, which were marked as Ex.A.2 to A.33. A scrutiny of the ledger books would clearly indicate that they were maintained regularly. This Court is unable to see any reason why the account books relied on by the plaintiff has to be rejected or to be disbelieved. On the contrary, the case of the defendants was that from the year 1969, they have been in possession and enjoyment of the Government poramboke, but not even one scrap of paper has been placed to believe the same. D.W.1 has, candidly, admitted that the rental payments, if made, would be evidenced from the accounts books maintained by him. The contention of the appellants' side that the defendants were not called upon to produce the account books to prove contra cannot be accepted. The settled proposition of law is that in order to take a correct decision on a given issue, a duty is cast upon both the plaintiffs and the defendants to assist the court. But, in the instant case, when the defendants have admitted that they were maintaining the accounts, there could not be any impediment for them to produce the same. But, the plaintiffs have produced all the ledger books, wherein entries as to the payment of rental by the defendants has been clearly entered all along the period. This would be clearly indicative the truth of the case of the plaintiffs. B-memos were obtained by the defendants only after the issuance of the notice in the year 1982 by the plaintiffs.

10. Under the stated circumstances, both the courts below have recorded a concurrent finding that the defendants was the tenant of the plaintiffs. Once the defendants are found to be the tenant of the plaintiffs landlord, they were estopped from questioning title of the plaintiffs as to the ownership. This Court is unable to notice any reason to disturb the

concurrent finding of both the courts below.

11. In the result, this second appeal fails and the same is dismissed, leaving the parties to bear their costs.

Index : Yes

Internet : Yes

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To

1. The Principal Sub court, Tiruchirapalli
2. The Principal District Munsif, Tiruchirapalli
3. The Record Keeper, VR Section,
High Court, Madras

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